



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
W.R. GRACE & CO., et al.,<sup>1</sup> ) Case No. 01-1139 (JKF)  
Debtors. ) Jointly Administered

Objection Deadline: July 3, 2008 at 4:00 p.m.

Hearing Date: July 21, 2008 at 1:00 p.m.

**NOTICE OF MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER  
APPROVING STIPULATION RESOLVING CLAIMS OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

TO: Parties required to receive notice pursuant to Del. Bankr. LR 2002-1.

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed the attached *Motion of the Debtors for Entry of an Order Approving Stipulation Resolving Claims of Montana Department of Environmental Quality* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington,

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

Delaware 19801 (the "Bankruptcy Court"). A true and correct copy of the Motion is attached hereto.

Responses to the relief requested in the Motion, if any, must be in writing and be filed with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern time) on **July 3, 2008**. At the same time, you must also serve a copy of the objections or responses, if any, upon the following: (i) co-counsel for the Debtors, Janet Baer, Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601 (fax number 312-861-2200), and James E. O'Neill, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) (fax number 302-652-4400); (ii) counsel to the Official Committee of Unsecured Creditors, Lewis Kruger, Stroock & Stroock & Lavan, 180 Maiden Lane, New York, NY 10038-4982 (fax 212-806-6006), and Michael R. Lastowski, Duane, Morris & Heckscher, LLP, 1100 N. Market Street, Suite 1200, Wilmington, DE 19801-1246 (fax 302-657-4901); (iii) counsel to the Official Committee of Property Damage Claimants, Scott L. Baena, Bilzin, Sumberg, Dunn, Baena, Price & Axelrod, First Union Financial Center, 200 South Biscayne Boulevard, Suite 2500, Miami, FL 33131 (fax 305-374-7593), and Michael B. Joseph, Ferry & Joseph, P.A., 824 Market Street, Suite 904, P.O. Box 1351, Wilmington, DE 19899 (fax 302-575-1714); (iv) counsel to the Official Committee of Personal Injury Claimants, Elihu Inselbuch, Caplin & Drysdale, Chartered, 375 Park Avenue, 35<sup>th</sup> Floor, New York, NY 10152-3500 (fax 212-644-6755), and Marla Eskin, Campbell & Levine, LLC, 800 N. King Street, Suite 300, Wilmington, DE 19801 (fax 302-426-9947); (v) counsel to the Official Committee of Equity Holders, Thomas M. Mayer, Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, NY 10022 (fax 212-715-8000), and Teresa K.D. Currier, Buchanan Ingersoll &

Rooney, 1000 West Street, Suite 1410, P.O. Box 1397, Wilmington, DE 19899-1397 (fax 302-552-4220); (vi) counsel to the Future Claimants' Representative, Richard H. Wyron, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007 (fax 202-424-7643), and John C. Phillips, Jr., Phillips, Goldman & Spence, P.A., 1200 North Broom Street, Wilmington, DE 19806 (fax 302-655-4210); and (vii) the Office of the United States Trustee, Attn: David Klauder, 844 N. King Street, Wilmington, DE 19801 (fax 302-573-6497).

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL

*[Remainder of Page Intentionally Left Blank]*

BE HELD BEFORE THE HONORABLE JUDITH K. FITZGERALD ON JULY 21, 2008, AT  
1:00 P.M., EASTERN TIME AT THE UNITED STATES BANKRUPTCY COURT, 824  
MARKET STREET, WILMINGTON, DELAWARE 19801.

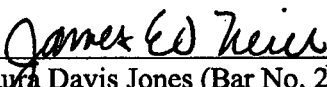
Dated: June 16, 2008

KIRKLAND & ELLIS LLP

David M. Bernick, P.C.  
Janet S. Baer  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

and

PACHULSKI STANG ZIEHL & JONES LLP

  
\_\_\_\_\_  
Laura Davis Jones (Bar No. 2436)  
James E. O'Neill (Bar No. 4042)  
Kathleen P. Makowski (Bar No. 3648)  
Timothy P. Cairns (Bar No. 4228)  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in Possession

THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <u>et al.</u> , <sup>1</sup>	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
	)	
Debtors.	)	Objection Deadline: July 3, 2008
	)	Hearing Date: July 21, 2008 at 1:00 p.m.

**MOTION OF THE DEBTORS FOR ENTRY OF AN  
ORDER APPROVING STIPULATION RESOLVING CLAIMS  
OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

The Debtors respectfully move this Court (the "Motion") for the entry of an Order approving the Stipulation attached as Exhibit A hereto resolving the Montana Department of Environmental Quality's proof of claim nos. 18496 and 15296 for environmental remediation and operation and maintenance costs of the MDEQ at the Debtors' Libby Asbestos Site<sup>2</sup>. The Stipulation is an exercise of the Debtors' sound business judgment and is in the best interest of

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<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

<sup>2</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

the Debtors, their estates, and their creditors. In support of the Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for this Motion are sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

**Background and Proofs of Claim**

3. On March 26, 2003, MDEQ filed Proof of Claim No. 6100 against the Debtors with respect to the Libby Site.

4. On May 20, 2003, MDEQ filed three virtually identical amended Proofs of Claim against the Debtors with respect to the Libby Site, described as follows:

<b><u>Claim No.</u></b>	<b><u>Amount</u></b>	<b><u>Priority</u></b>	<b><u>Basis</u></b>
15296	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs
15297	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs
15298	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs

5. Pursuant to an Order entered on May 24, 2004 [Docket No.5646] this Court expunged Proof of Claim No. 6100 as duplicated and superseded by Proofs of Claim Nos. 15296, 15297, and 15298.

6. Pursuant to an Order entered on April 17, 2007 [Docket No. 15218] this Court approved a stipulation between Debtors and MDEQ resolving certain claims. Specifically, claim numbers 15297 and 15298 were disallowed and expunged and claim number 15296 remained in the claims register as outlined in the stipulation attached to the order as Exhibit 1.

7. On November 14, 2007, MDEQ filed an amended Proof of Claim ("MDEQ's Claim") against the Debtors with respect to the Libby Site, described as follows:

<u>Claim No.</u>	<u>Amount</u>	<u>Priority</u>	<u>Basis</u>
18496	\$55,010,022.16	Unsecured, Non-Priority	Clean-Up Costs

**Settlement**

8. To avoid protracted litigation and resolve their liability in connection with MDEQ's Claim at the Libby Site, (which term as used in the Stipulation and in this Motion does not include Operable Unit 3 as defined in the Stipulation), the Debtors and MDEQ have agreed to a settlement of MDEQ's Claim as outlined in the attached Stipulation.

9. Pursuant to the Stipulation, MDEQ's Claim shall be allowed as a general unsecured, pre-petition, non-priority claim against the chapter 11 estates of the Debtors in the amount of \$5,167,000. Except as to claims relating to Operable Unit 3, which are specifically reserved in the Stipulation, the remaining portions of MDEQ's Claim are resolved. In addition, MDEQ's Claim No. 15296 shall be disallowed and expunged.

10. MDEQ shall not be entitled to pre-petition or post-petition interest on MDEQ's Claim allowed by the Stipulation with respect to any period prior to the effective date of a confirmed chapter 11 plan or plans with respect to the Debtors (the "Plan"). MDEQ's Claim shall be paid in the same manner as all other similarly situated general unsecured claims pursuant to the Plan except with respect to the payment of interest as described herein.

11. MDEQ will place and maintain any distributions received by MDEQ on account of its allowed claim set forth in the Stipulation in a State special revenue fund, as provided for in § 17-2-102(1)(b)(i), MCA, to be known as the "Libby Asbestos Site State Cost Account."

MDEQ shall use the funds in this account, together with all interest and earnings thereon, only for the State's CERCLA cost share requirements including operation and maintenance expenses or other costs related to asbestos at the Site.

12. MDEQ agrees that it is forever barred, estopped, and enjoined from asserting any additional pre-petition or post-petition claims against the Debtors for past, present and future costs of investigation, remediation, monitoring, and maintenance at the Libby Site (other than Operable Unit 3) under the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 et seq., MCA, (CECRA) and the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 et seq. (CERCLA).

13. MDEQ and the State of Montana reserve and the Stipulation is without prejudice to all rights, claims, and causes of action they have or may in the future have with respect to all matters not expressly included in the foregoing paragraph 12.

14. Debtors release and agree not to assert any claims or causes of action against the State of Montana, including any of its departments, agencies, instrumentalities, contractors or employees, with respect to the Libby Site, including but not limited to any claims for reimbursement, contribution, cost recovery or damages under CECRA, CERCLA, or any other provision of law. This release does not cover and Debtors expressly reserve all claims relating to Operable Unit 3.



15. In the event that the Stipulation becomes null and void for any reason, then MDEQ's Claim shall be deemed fully reinstated, subject, however, to Debtor's defenses, counterclaims and offsets, if any, and credits for payments MDEQ has received, if any. Neither the Stipulation nor its nullification pursuant to its terms shall create a right that does not presently exist for MDEQ or any other party to file additional claims with respect to these matters, nor waive any defense that the Debtors may have against such claims.

16. The Stipulation shall be subject to a thirty (30) day public comment period, which is taking place concurrent with the filing of this Motion. MDEQ reserves the right to withdraw or withhold its consent to this Stipulation if the public comments received disclose facts or considerations that indicate that this Stipulation is inappropriate, improper, or inadequate. The parties request the Court not enter the Order approving the Stipulation until the conclusion of the public comment period and after the State provides the Court with copies of any public comments and its responses thereto.

**Relief Requested**

17. By this Motion, the Debtors respectfully seek the entry of an order, pursuant to sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (a) approving the Debtors' execution of the Stipulation; (b) allowing MDEQ Claim No. 18496 as provided in the Stipulation; (c) disallowing and expunging MDEQ Claim No. 15296; (d) granting the Debtors authority to consummate the transactions contemplated in the Stipulation; and (e) granting such other relief as may be appropriate.

**Basis for Relief**

**Sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a)**

18. This Court has the statutory authority to authorize and approve the Stipulation pursuant to Bankruptcy Code sections 105(a) and 363(b) and Bankruptcy Rule 9019.

19. Section 105(a) of the Bankruptcy Code provides in pertinent part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a).

20. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate....” 11 U.S.C. §363(b)(1). This Court may authorize the Debtors to use or sell property of the estates pursuant to section 363(b)(1) of the Bankruptcy Code if such use is an exercise of the debtor’s sound business judgment and when the use of the property is proposed in good faith. In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175 (D. Del. 1991); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 149-50 (3d Cir. 1986); In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); see also In re Schipper, 933 F.2d 513, 515 (7<sup>th</sup> Cir. 1991) (a debtor’s decision must be supported by some “articulated business justification”); Stephen Indus., Inc. v. McClung, 789 F.2d 386, 390 (6<sup>th</sup> Cir. 1986) (adopting the “sound business purpose” standard for sales proposed pursuant to section 363(b)); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999); In re Ernst Home Center, Inc., 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997).

21. A settlement of claims and causes of action by a debtor in possession constitutes a use of the property of the estate. See Northview Motors, Inc. v. Chrysler Motors Corp., 186 F.3d 346, 350 (3d Cir. 1999). If a settlement is outside the ordinary course of business of the debtor, it requires the approval of the bankruptcy court pursuant to Bankruptcy Code section 363(b).

22. Bankruptcy Rule 9019(a) provides in pertinent part that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Settlements and compromises are “a normal part of the process of reorganization.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (citations omitted). Indeed, compromises are favored in bankruptcy since they minimize litigation and expedite the administration of a bankruptcy case. See In re Martin, 91 F.3d 389, 393 (3d Cir. 1996); see also In re Key3Media Group, Inc., 2006 WL 2842462, at \*3 (D. Del. 2006).

23. Before approving a settlement under Bankruptcy Rule 9019, however, a court must determine that the proposed settlement is in the best interests of the debtor’s estate. See Martin, 91 F.3d at 394; In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’”) (citation omitted). To reach this determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. See Martin, 91 F.3d at 393.

24. The standard by which courts should evaluate the reasonableness of a proposed compromise and settlement is well established. This standard includes consideration of the following four factors: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” Id.; see also In re Nutraquest, Inc., 434 F.3d 639, 644-45 (3d Cir. 2006).

25. It is also well settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” Key3Media Group, 2006 WL 2842462, at \*3; In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006) (citing In re Penn Cent. Transp. Co., 596 F.2d 1102, 1114 (3d Cir. 1979)). Under this test, a proponent must simply demonstrate that a proposed settlement does not fall “below the lowest point in the range of reasonableness.” World Health Alternatives, 344 B.R. at 296 (citations omitted); see also In re Neshaminy Office Bldg. Assocs., 62 B.R. 798, 803 (E.D. Pa. 1986).

**Application of Standards for Approval to the Facts of This Case**

**A. The Settlement Agreement is a Sound Exercise of the Debtors’ Business Judgment, Satisfying the Requirements of Section 363(b).**

26. The Debtors and MDEQ have negotiated in good faith and have used commercially reasonable efforts to arrive at the terms in the Stipulation. The Stipulation prevents the incurrence of significant transaction costs and cost-effectively resolves significant liabilities of the Debtors. Allowing the settlement to proceed efficiently eliminates claims in the amount of over \$55 million against the Debtors’ estates for the sum of slightly in excess of \$5 million. Furthermore, this settlement allows the Debtors to avoid potential additional obligations, such as payment for further future MDEQ administrative costs associated with the Libby Site. Thus, granting this Motion and allowing the settlement to proceed will eliminate the risk of increased costs, and resolve these significant liabilities. Therefore, entry into the Settlement Agreement is within the Debtors’ sound business judgment.

**B. The Settlement Agreement is Fair, Reasonable, and in the Best Interests of the Debtors' Estates, Satisfying the Requirements of Bankruptcy Rule 9019.**

27. The Stipulation described herein was the product of a rigorous negotiation process and falls within the reasonable range of litigation possibilities. The Court's approval of the Stipulation will resolve the MDEQ's claim for current and future remediation and operation and maintenance costs at the Libby Site without forcing potentially complex litigation that could, among other things, require presentation of significant quantities of evidence concerning the Libby Site and projected costs for the past number of years as well as for at least thirty years in the future.

28. Approval of the Stipulation also benefits the public interest because the settlement will support and will substantially fund the MDEQ's costs associated with the Libby Site. Finally, the Stipulation in conjunction with the Libby Settlement Agreement approved by this Court on June 2, 2008 [Docket No. 18848], provides assurance to the creditors that Debtor's liabilities for response costs associated with the Libby Site are fully addressed and permanently resolved.

**Conclusion**

29. For the reasons stated above, the proposed Stipulation is fair and equitable and in the best interests of the Debtors, their estates, and their creditors, and also in the public interest because it is the best settlement attainable given all the facts and circumstances. In the absence of a resolution by settlement, the Debtors will likely incur substantial legal fees and expenses litigating this matter to final judgment. Accordingly, the Debtors have demonstrated a sound business justification and best interest for the execution and consummation of the Stipulation.

**Notice**

30. Notice of this Motion has been given to: (i) the office of the United States Trustee, (ii) counsel to the DIP Lender, (iii) counsel to The Chase Manhattan Bank as agent for the Debtors' prepetition lenders, (iv) counsel to each of the official committees appointed in these Chapter 11 Cases, (v) counsel to the Future Claimants' Representative; (vi) those parties that requested service and notice of papers in accordance with Bankruptcy Rule 2002; and (vii) counsel to the United States and the MDEQ. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

**No Prior Request**

31. No prior motion or application for the relief requested herein has been made to this or any other court.

32. The Debtors respectfully request that the hearing on this Motion not be held until the MDEQ informs the Court of any public comment on the Stipulation and of MDEQ's responses to these comments, consistent with the applicable provisions of the Stipulation.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached as Exhibit B hereto, (i) approving the Debtors' execution of the Stipulation attached as Exhibit A hereto, (ii) allowing MDEQ Proof of Claim 18496 in the sums provided for herein and disallowing and expunging MDEQ proof of claim no. 15296;


- (iii) authorizing the Debtors to consummate the transactions contemplated in the Stipulation, and
- (iv) granting such other relief as may be just or proper.

Dated: June 16, 2008

KIRKLAND & ELLIS LLP  
David M. Bernick, P.C.  
Janet S. Baer  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

and

PACHULSKI STANG ZIEHL & JONES LLP

  
\_\_\_\_\_  
Laura Davis Jones (Bar No. 2436)  
James E. O'Neill (Bar No. 4042)  
Kathleen P. Makowski (Bar No. 3648)  
Timothy P. Cairns (Bar No. 4228)  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705  
(302) 652-4100

Co-Counsel for the Debtors and Debtors in  
Possession

THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <u>et al.</u> , <sup>1</sup>	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
	)	
Debtors.	)	Re: Docket No. <u>18931</u> = 19086
	)	July 21, 2008 Agenda # <u>5</u>

**ORDER AUTHORIZING STIPULATION RESOLVING CLAIMS OF MONTANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Upon consideration of the *Motion of Debtors for an Order Approving Stipulation With the Montana Department of Environmental Quality* (the "Motion"); and due and proper notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors,<sup>2</sup> their estates and creditors, it is hereby

ORDERED that the Motion is granted; and it is further

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc., Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion or the Stipulation.



ORDERED that the Debtors are authorized to enter into the Stipulation; and it is further

ORDERED that the Debtors are authorized to perform their respective obligations under the Stipulation; and it is further

ORDERED that (i) MDEQ Proof of Claim No. 18496 shall be allowed as a general unsecured pre-petition claims in the amount of \$5,167,000 and the remaining portion of Claim No. 18496 shall be resolved as provided in the Stipulation; and (ii) MDEQ Claim No. 15296 shall be disallowed and expunged; and it is further

ORDERED that the Debtors are authorized to take whatever other actions may be necessary to consummate the transactions contemplated by the Stipulation; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order; and it is further

ORDERED that this Order is effective immediately upon its entry.

Dated: July 21, 2008

*Judith K. Fitzgerald*

Honorable Judith K. Fitzgerald  
U. S. Bankruptcy Judge

SAT

**EXHIBIT A**

**STIPULATION**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	
W. R. GRACE & CO., <i>et al.</i> <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	Case No. 01-01139 (JKF)
	)	(Jointly Administered)

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STIPULATION RESOLVING CLAIMS OF  
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

This Stipulation is entered into this 10th day of May 2008, between the above-captioned debtors (collectively, the "Debtors") and the State of Montana Department of Environmental Quality ("MDEQ").

WHEREAS, on April 2, 2001 the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (*f/k/a* Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (*f/k/a* Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food IN Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (*f/k/a* Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (*f/k/a* Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (*f/k/a* Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (*f/k/a* Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (*f/k/a* GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (*f/k/a* Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (*f/k/a* Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (*f/k/a* British Nursing Association, Inc.), Remedium Group, Inc. (*f/k/a* Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (*f/k/a* Crps Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

WHEREAS, on April 22, 2002 this Court issued its Bar Date Order which established March 31, 2003 as the Bar Date for the filing of certain pre-petition (a) non-asbestos, (b) asbestos property damage, and (c) medical monitoring claims.

WHEREAS, MDEQ timely filed Proof of Claim No. 6100 against the Debtors with respect to the Libby Asbestos Site (or "Libby Site," as defined in Paragraph 1.a. herein) in Libby, MT.

WHEREAS, on May 20, 2003 MDEQ filed three virtually identical amended Proofs of Claim against the Debtors with respect to the Libby Site, described as follows:

<u>Claim No.</u>	<u>Amount</u>	<u>Priority</u>	<u>Basis</u>
15296	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs
15297	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs
15298	\$8,510,022.16	Unsecured, Non-Priority	Clean-Up Costs

WHEREAS, pursuant to an Order entered on May 24, 2004 [Docket No.5646] this Court expunged Proof of Claim No. 6100 as duplicated and superseded by Proofs of Claim Nos. 15296, 15297, and 15298.

WHEREAS, pursuant to an Order entered on April 17, 2007 [Docket No. 15218] this Court approved a stipulation between Debtors and MDEQ resolving certain claims. Specifically, claim numbers 15297 and 15298 were disallowed and expunged and claim number 15296 remained in the claims register as outlined in the stipulation attached to the order as Exhibit 1. The terms of the order and stipulation [Docket No. 15218] are incorporated herein.

WHEREAS, on November 14, 2007 MDEQ filed an amended Proof of Claim ("MDEQ's Claim") against the Debtors with respect to the Libby Site, described as follows:

<u>Claim No.</u>	<u>Amount</u>	<u>Priority</u>	<u>Basis</u>
18496	\$55,010,022.16	Unsecured, Non-Priority	Clean-Up Costs

WHEREAS, the United States on behalf of the Environmental Protection Agency ("EPA") and Debtors have proposed a settlement of EPA's claims at the Site that would, among other things, allocate \$11 million and the earnings on that amount towards operation and maintenance expenses at the Site, which covers some of the costs set forth in MDEQ's Proof of Claim.

WHEREAS, on January 13, 2005 the Debtors filed an Amended Joint Plan of Reorganization under which allowed general unsecured claims shall be paid in full, 85% in cash and 15% in stock of the Reorganized Debtors (the "Proposed Plan");

WHEREAS, the Debtors and MDEQ have agreed to settle MDEQ's Claim, with the exception of Operable Unit 3 as described below, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Debtors and MDEQ hereby stipulate and agree as follows:

1. Whenever the terms listed below are used in this Stipulation, the following definitions shall apply:

a. "Libby Asbestos Site" or "Libby Site" shall mean the Zonolite Mine and all areas (including any structure, soil, air, water, sediment, or receptor) in and near Lincoln County, Montana, that have been contaminated by natural or human caused migration of hazardous substances and/or pollutants or contaminants from the Zonolite Mine. For purposes of this Stipulation, the Libby Site shall not include Operable Unit 3.

b. "Operable Unit 3" shall mean property in or around the Zonolite Mine owned by W. R. Grace or Grace-owned subsidiaries (excluding Operable Unit 2) and any area (including any structure, soil, air, water, sediment or receptor) impacted by the release and/or release and subsequent migration of hazardous substances and/or pollutants or contaminants from such property, including, but not limited to, the mine property, the

Kootenai River and the sediments therein, Rainey Creek, Rainey Creek Road, and areas in which tree bark is contaminated with such hazardous substances and/or pollutants or contaminants.

c. "CECRA" shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 et seq., MCA.

d. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC § 9601 et seq.

2. MDEQ's Claim, Claim Number 18496, shall be allowed as an unsecured, pre-petition, non-priority claim against the chapter 11 estates of the Debtors in the amount of \$5,167,000. Except as to claims relating to Operable Unit 3, which are specifically reserved herein, the remaining portions of MDEQ's Claim are resolved. Claims reserved for Operable Unit 3 include, without limitation, any liability of Debtors for injunctive relief, administrative order enforcement, cost recovery, and liability for damages for injury to, destruction of, or loss of natural resources under CERCLA or CECRA. MDEQ's Claim No. 15296 shall hereby be disallowed and expunged.

3. MDEQ shall not be entitled to pre-petition or post-petition interest on MDEQ's Claim allowed herein with respect to any period prior to the effective date of a confirmed chapter 11 plan or plans with respect to the Debtors (the "Plan"). MDEQ's Claim shall be paid in the same manner as all other similarly situated general unsecured claims pursuant to the "Plan" except with respect to the payment of interest as described herein.

4. Upon approval of this Stipulation by the Bankruptcy Court, the Debtors shall direct their Claims Agent, Rust Consulting, Inc. ("Claims Agent"), to mark the Claims Register to reflect that Claim No. 18496 shall be allowed as outlined herein.

5. MDEQ will place and maintain any distributions received by MDEQ on account of its allowed claim set forth in Paragraph 2 in a State special revenue fund, as provided for in § 17-2-

102(1)(b)(i), MCA, to be known as the "Libby Asbestos Site State Cost Account." MDEQ shall use the funds in this account, together with all interest and earnings thereon, only for the State's CERCLA cost share requirements, including operation and maintenance expenses, or other costs related to asbestos at the Site.

6. MDEQ agrees that it is forever barred, estopped, and enjoined from asserting any additional pre-petition or post-petition claims against the Debtors for past, present and future costs of investigation, remediation, monitoring, and maintenance at the Libby Site (except for Operable Unit 3) under the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701 et seq., MCA, (CECRA) and the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC § 9601 et seq. (CERCLA).

7. MDEQ and the State of Montana reserve, and this Stipulation is without prejudice to, all rights, claims, and causes of action they have or may in the future have against Debtors with respect to all matters not expressly included in the foregoing Paragraph 6.

8. Debtors release and agree not to assert any claims or causes of action against the State of Montana, including any of its departments, agencies, instrumentalities, contractors or employees, with respect to the Libby Site, including but not limited to any claims for reimbursement, contribution, cost recovery or damages under CECRA, CERCLA, or any other provision of law. This release does not cover and Debtors expressly reserve all claims relating to Operable Unit 3.

9. In the event that this Stipulation becomes null and void for any reason, then the preceding Paragraphs shall not apply, and MDEQ's Claim shall be deemed fully reinstated, subject, however, to Debtor's defenses, counterclaims and offsets, if any, and credits for payments MDEQ has received, if any. Neither this Stipulation nor its nullification pursuant to its

terms shall create a right that does not presently exist for MDEQ or any other party to file additional claims with respect to these matters, nor waive any defense that the Debtors may have against such claims.

10. The Debtors shall take whatever additional action, if any, is necessary to insure that MDEQ's Claim No. 18496 is allowed as outlined herein.

11. This Stipulation shall be subject to a thirty (30) day public comment period, which may take place concurrent with the judicial approval process described herein. MDEQ reserves the right to withdraw or withhold its consent to this Stipulation if the public comments received disclose facts or considerations that indicate that this Stipulation is inappropriate, improper, or inadequate. At the conclusion of the public comment period, the State will provide the Court with copies of any public comments and its responses thereto.

12. Entry into this Stipulation is contingent upon the Settlement Agreement between the United States, on behalf of the Environmental Protection Agency and other federal agencies, and Grace regarding the Libby Asbestos Site ("Libby Settlement Agreement") (which is attached as Exhibit A. to Docket No. 18271 filed on March 12, 2008) being approved by the Bankruptcy Court and Grace complying with the payment obligations under the Libby Settlement Agreement. This Stipulation shall be null and void if the Bankruptcy Court does not approve the Libby Settlement Agreement or if Grace does not pay to the United States the sum specified in the Libby Settlement Agreement.

13. Notwithstanding the foregoing, this Stipulation and the Debtors' signature hereon shall not become effective and binding until the Bankruptcy Court has entered an Order approving it. The Debtors shall promptly seek approval of this Stipulation under Bankruptcy Rule 9019 or other applicable provisions of the Bankruptcy Code.



14. In the event this Stipulation does not become effective as outlined in Paragraphs 10, 11, and 12 above prior to December 31, 2008, this Stipulation shall be null and void unless otherwise mutually agreed by the parties.

Montana Department of Environmental  
Quality

By: Thomas M. Ziegler  
for Richard H. Oppen  
Director

Date: May 20, 2008

W. R. Grace & Co., et al.

By: William M. Corcoran  
("Debtors")  
William M. Corcoran  
Vice-President  
Public and Regulatory Affairs

Date: 5-22-08

Approved for Legal Content:

By: William B. Kirley  
William B. Kirley  
DEQ Counsel

Date: 5-20-08

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <u>et al.</u> ,	)	Case No. 01-1139 (JKF)
	)	(Jointly Administered)
	)	
Debtors.	)	Hearing Date: July 21, 2008 at 1:00 p.m.
	)	Re: Docket Number 18931

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO  
AND JOINDER IN MOTION OF DEBTORS FOR ENTRY OF AN ORDER  
APPROVING STIPULATION RESOLVING CLAIMS OF MONTANA DEPARTMENT  
OF ENVIRONMENTAL QUALITY (DOCKET NO. 18931)**

The Montana Department of Environmental Quality ("MDEQ") submits this Response to and Joinder (the "Response") in the Motion of the Debtors' for Entry of an Order Approving Stipulation Resolving Claims of Montana Department of Environmental Quality for environmental response costs, including operation and maintenance costs, at the Debtors' Libby Asbestos Site (the "Motion"). See Docket No. 18931. In support of this Response, the MDEQ states as follows:

1. On May 20, 2008, MDEQ and W.R. Grace & Co. and certain of its affiliates (collectively "Debtors" or "Grace") entered into a Stipulation Resolving Claims of MDEQ ("the Stipulation"), in order to settle, as set forth in the Stipulation, MDEQ's claims for its response costs related to the Libby Asbestos Superfund Site under the Montana Comprehensive Environmental Cleanup and Responsibility Act, §§ 75-10-701, MCA, et seq (herein "CECRA"), and the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq (herein "CERCLA"). See Exhibit A to Debtors' Motion (Docket No. 18931). Under the Stipulation, MDEQ will be allowed an unsecured, prepetition, non-priority claim in the amount of \$5,167,000, with certain claims being reserved as provided in the Stipulation.

2. MDEQ submitted the proposed Stipulation to a thirty (30) day public comment period, which ended on July 7, 2008. Notice of the public comment period was published in *The Western News*, a newspaper published in Libby, Montana, and was mailed directly to local government officials. Copies of the Stipulation were available at several locations in the Libby area and were available through MDEQ's website.

3. Pursuant to Paragraph 11 of the Stipulation, MDEQ hereby provides the Court with copies of all public comments received and the State's responses thereto. A copy of the public comments received is attached hereto as Exhibit 1.

4. The one set of comments received was from the Libby Community Advisory Group. The Libby Community Advisory Group (CAG) provides a public forum for members of the community to review activities related to the Libby Asbestos Superfund Site, to advise state and federal government representatives as to concerns of the community, and to convey information to the community. The Libby CAG is made up of community members representing interests of the local schools, local government, medical and health officials, fire officials, former employees of Grace, and public interest groups.

5. The Libby CAG comments generally support the Stipulation, but raise additional points to be considered in the management and use of the funds to be received on the allowed claim. The specific comments received and MDEQ's responses are as follows:

**Comment No. 1:** Healthcare Costs:

The CAG agrees that it is appropriate that W.R. Grace provide dollars for operations and maintenance costs. In addition, we urge the State of Montana and all federal agencies involved in this clean-up effort not to lose sight of the need to provide funding for day-to-day healthcare needs of those affected by asbestos exposure. It is our recommendation that a trust fund be established for this purpose. We encourage

Governor Schweitzer and our state agencies to take a leadership role in making this trust fund a reality!

**Response to Comment No. 1:** The settlement set forth in the Stipulation relates only to DEQ's claim in the bankruptcy for specific response costs under the state and federal Superfund laws. Accordingly, the scope of the proposed settlement is limited to recovery of certain cleanup costs such as operation and maintenance costs. Since the comment notes that it is appropriate that Grace provide dollars for operation and maintenance costs, we understand this comment as providing general support for the settlement.

The comment also focuses on additional funding for day-to-day health care needs of those affected by asbestos exposure. However, any such costs are outside the limited scope of this particular settlement.

**Comment No. 2:** Money should only be used for O&M costs:

We believe that it is imperative that these settlement dollars, and all accrued interest, be used for ongoing operations and maintenance costs at the Libby Asbestos Site. Reallocation of these funds to another use or to another community must not be allowed to happen.

**Response to Comment No. 2:** The primary purpose of the Stipulation is to ensure that the funds necessary to properly conduct operation and maintenance of the remedy at the Libby Site will be available. If the funds recently obtained by EPA in its settlement with W.R. Grace for the Libby Site are exhausted, the State could also be responsible for providing 10% of the remaining costs of implementing the remedy. The terms of the Settlement Agreement would allow the State to use these funds to provide its 10% cost share for remedy implementation expenses, as well as O&M expenses.

DEQ agrees with the Community Advisory Group that reallocation of the settlement funds to another use or another community must not be allowed. The language in Paragraph 5 of the Settlement Agreement provides that the funds shall be used "only for the State's CERCLA cost share requirements, including operation and maintenance expenses, or other costs related to asbestos at the Site." This language is specifically intended to ensure that the money will only be used at the Libby Asbestos Site and will only be used for needs related to asbestos at the Site.

**Comment No. 3:** If not needed for O&M, this money should be given to the Libby community:

While not likely, it is possible that all O&M needs will be adequately funded by the EPA settlement with W.R. Grace. In that case, the CAG believes that the funds from this settlement should be transferred to the Libby community. The community would then determine the best use of the money (i.e., economic development, seed money for a healthcare trust fund, etc.).

**Response to Comment No. 3:** As provided in Paragraph 5 of the Stipulation, if the settlement funds and interest are not needed for operation and maintenance expenses or costs of implementing additional remedial actions at the Libby Site, the funds may be used for "other costs related to asbestos at the Site."

The availability, if any, of funds for anything other than the State's share of remedial action costs and O&M will not be known for several years. It is difficult to predict what the greatest needs will be at that time. DEQ will certainly look to the community for input on identifying the greatest needs and the most appropriate uses should such funds become available.

6. The Stipulation provides that MDEQ may “withdraw or withhold its consent to this Stipulation if the public comments received disclose facts or considerations that indicate that this stipulation is inappropriate, improper, or inadequate.” (Stipulation at Paragraph 11). MDEQ has determined that nothing in the comments indicates that the settlement is inappropriate, improper, or inadequate, and, after consideration of the comments, MDEQ supports the Stipulation as proposed.

7. “The relevant inquiry in reviewing environmental settlements is whether the settlement is fair, reasonable and faithful to the objectives of the governing statute”. In Re: Energy Cooperative, Inc., Debtor, 173 B.R. 363, 367 (No. Dist. Ill. 1994) (citing U.S. v. Cannons Engineering, 899 F.2d 79, 84 (1<sup>st</sup> Cir. 1990); and U.S. v. Akzo Coatings of America, Inc., 949 F.2d 1409, 1424 (6<sup>th</sup> Cir. 1991)).

8. The Stipulation is a fair and reasonable settlement of MDEQ’s claims related to the Libby Asbestos Superfund Site. Under the terms of the Stipulation, DEQ will receive an allowed, unsecured claim in the Grace bankruptcy in the amount of \$5,167,000. The funds received by DEQ are to be used for the State’s CERCLA cost share requirements, including operation and maintenance costs, or other costs related to asbestos at the Site. Claims that are not appropriately settled at this time are reserved as provided in the Stipulation.

9. The Court is afforded discretion in reviewing environmental settlements. This discretion is to be exercised in a deferential manner in favor of the general policy of encouraging settlement. The underlying policy of encouraging settlement has particular force where the government has worked on the construction of the proposed settlement. In Re: Energy Cooperative, Inc., 173 B.R. at 367.

10. The Stipulation is the result of arm’s length negotiations between MDEQ and Grace and represents a reasonable and fair compromise of MDEQ’s claim. The settlement will

provide some certainty to the State in providing funds so that cleanup of the Site may properly be completed.

11. The government's technical and legal assessments underlying environmental settlements are entitled to deference by the Court so long as the government agency charged with the primary responsibility for enforcing environmental laws supplies a reasonable good faith basis for the settlement such as achievement of prompt settlement in order to initiate response activities. See Cannons Engineering, 899 F.2d at 87-88.

12. The Stipulation will ensure the availability of funding for the State to meet its cost share obligations for cleanup of the Libby Asbestos Superfund Site, and will avoid the uncertainty and expense of further litigation.

13. For the above-stated reasons, MDEQ requests entry of an Order (See Docket No. 18931, Exhibit B) approving the Stipulation Resolving Claims of MDEQ related to the Libby Asbestos Superfund Site.

Dated: July 9, 2008.

**WOMBLE CARLYLE SANDRIDGE & RICE**  
*A Professional Limited Liability Company*

/s/ Kevin J. Mangan  
Francis A. Monaco, Jr. (#2078)  
Kevin J. Mangan (#3810)  
222 Delaware Avenue, 15th Floor  
Wilmington, DE 19801  
(302) 252-4320  
Counsel for the Montana Department of  
Environmental Quality